85-2129

Supreme Court, U.S.
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CASE NO. A-796

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

JOSEPH B. BERGEN, J.D., Attorney at Law, Individually, and on Behalf of All Other Attorneys in the State of Georgia Similarly Situated,

Appellant,

VS.

MARTINDALE-HUBBELL, INC.,

Appellee.

ON APPEAL FROM
THE COURT OF APPEALS AND
THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

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II. STATEMENT OF FACTS

It must be emphasized at the outset that, contrary to the implication in the style of the case chosen by the Appellant/Petitioner, this case has never been certified as a class action and Mr. Bergen, therefore, stands before this Court on his own behalf and not as the certified representative of any class.

It is uncontested that the Appellee/Respondent Martindale-Hubbell, Inc.* is a commercial publishing house engaged in the business of compiling, publishing and distributing a law list and directory of attorneys at law who are assigned a "rating" as to their legal ability of "a" ("very high"); "b" ("high)' "c" ("fair"); or, no assigned

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*In compliance with Rule 28.1 of the Rules of this Court, Appellee/Respondent shows that it has no parent company, subsidiaries (except wholly owned subsidiaries) or affiliates.

rating at all as to legal ability (Paragraph 13 of Plaintiff's Complaint). As shown by the Appellee/Respondent's verified Answer, when a rating of "a", "b", or "c" is published, it is always with the letter "v" - "very high", the General Recommendations rating which embraces faithful adherence to ethical standards, professional reliability and diligence and other pertinent factors. No rating whatsoever is published unless the file supports a "v" (Paragraph 13 under Seventeenth Defense of Answer). Appellant/Petitioner at all times relevant hereto has been listed with a "bv" rating and complains that the Appellee/Respondent has refused to assign him "an 'a' rating, notwithstanding the fact that his legal ability is 'very high,'. . . ." Appellee/Respondent's verified answer shows that the ratings

published in its Directory are not simply assigned or "given" by it, but rather reflect a consensus of the recommendations it receives from lawyers and members of the Judiciary through responses to confidential questionnaires.

In paragraph 34 of his Complaint, Appellant/Petitioner asserts that the rating system administered by the Appellee/Respondent under which Appellant/Petitioner was given a "bv" as opposed to an "av" rating, has "libeled and defamed Plaintiff . . . in a manner that is intended to injure his reputation as an attorney with reference to his profession as an attorney at law . . . ."

In regard to the Fair Credit Reporting Act, Appellant/Petitioner alleges that the Appellee/Respondent has failed to disclose the nature and substance of all information in its files

on Appellant/Petitioner together with the sources of the information in violation of 15 U.S.C. Sec. 1681(g) and 1681(h). Appellant/Petitioner seeks damages for the failure of the Appellee/Respondent to disclose the information in its files and also seeks to review such information.

The Appellee/Respondent moved for judgment on the pleadings with regard to the Plaintiff's allegations and Appellant/Petitioner filed a cross-motion for judgment as to Count II of his Complaint seeking relief under the Fair Credit Reporting Act. On January 21, 1985, the trial court entered separate orders granting the Appellee/Respondent's motion and denying the Appellant/Petitioner's motion.

On October 23, 1985, the Court of Appeals of Georgie entered its decision affirming the judgment of the trial

court. That opinion is attached hereto as Appendix "A". It is clear from the text of its order that the Court of Appeals of Georgia did not explicitly call into question the constitutionality of the Fair Credit Reporting Act or any other federal statute. The Court of Appeals of Georgia merely construed that act so as to deny the Appellant/Petitioner's claim for relief. The Court of Appeals of Georgia also rejected Appellant/Petitioner's claim of libel. The Appellant/Petitioner's petition for a writ of certiorari to the Georgia Court of Appeals was rejected by the Georgia Supreme Court on January 8, 1986 and subsequently the Appellant/Petitioner's motion for rehearing before the Georgia Supreme Court was denied on January 28, 1986.

III. GROUNDS FOR DISMISSAL

The Appellee/Respondent shows that the Appellant/Petitioner's current appeal must be dismissed on the following grounds:

1. The decision of the Georgia Court of Appeals at issue did not call into question the validity of any federal statute.

2. The Appellant/Petitioner's appeal does not present a substantial federal question.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. The decision of the Georgia Court of Appeals at issue did not call into question the validity of any federal statute.

In its opinion entered on October 23, 1985, the Court of Appeals of Georgia

found that the Appellee/Respondent's publication does not constitute a "consumer report" within the meaning of the Fair Credit Reporting Act in that the Appellee/Respondent is not a "consumer reporting agency" so as to be subject to the disclosure provisions of the Fair Credit Reporting Act. The Court of Appeals of Georgia thus found that the grant to Appellee/Respondent of judgment on the pleadings on Appellant/Petitioner's claims under the Fair Credit Reporting Act and a concomitant denial of Appellant/Petitioner's motion for partial judgment on the pleadings on that issue were correct.

Appellant/Petitioner seeks to appeal the decision of the Georgia Court of Appeals and the denial of the writ of certiorari by the Georgia Supreme Court

pursuant to 28 U.S.C. Sec. 1257 which states in pertinent part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

To be appealable, a state court decision must hold that a treaty or statute of the United States is invalid in whole or in part as applied to particular circumstances of a case. Flournoy v. Weiner, 321 U.S. 253, 263 (1943). It is not enough that the state court merely construes the treaty or statue so as to deny a claim thereunder or that it views the facts so as to place

the litigant outside the scope of the federal law. Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 289-290 (1958). Moreover, a state decision construing a federal statute may only be reviewed by certiorari pursuant to 28 U.S.C. Sec. 1257 (3) to the extent that it presumes to reject a right, privilege, or immunity under federal law. See St. Louis, I.M. & S.R. Co. v. Taylor, 210 U.S. 281, 293 (1907).

Thus, it is absolutely apparent from a review of the Georgia Court of Appeals decision that the direct appeal being attempted by the Appellant/Petitioner is inappropriate and, therefore, must be dismissed.

(B) The Appellant/Petitioner's appeal does not present a substantial federal question.

It is essential to jurisdiction of the Supreme Court under 28 U.S.C. Sec. 1257 that a substantial federal question was properly raised in the state court proceedings. An alleged federal question which is devoid of merit will not confer jurisdiction on this Honorable Court and the lack of a substantial federal question is cause for the dismissal of an appeal or for denial of a petition for writ of certiorari. Zucht v. King, 260 U.S. 174 (1922); Palmer Oil Corp. v. Amerada Petroleum Corp., 343 U.S. 390 (1952). Since it is absolutely clear that the Appellant/Petitioner may not proceed by direct appeal in this case, he may obtain review, if at all, only through a petition for writ of certiorari. Appellee/Respondent shows that even if Appellant/Petitioner's jurisdictional statement should be

construed as a petition for writ of certiorari, his contentions must be dismissed for lack of a substantial federal question.

The purpose of the Fair Credit Reporting Act is stated in 15 U.S.C. Sec. 1681(b), the language of which is reproduced in Appendix "B" attached hereto.

In 15 U.S.C. Sec. 1681a(f), the term "consumer reporting agency" is defined and the relevant statutory language is reproduced in Appendix "B" attached hereto.

The term "consumer report" is defined in 15 U.S.C. Sec. 1681a(d) and that definition is reproduced in Appendix "B" attached hereto.

It is the position of the Appellee/Respondent that it is not a consumer reporting agency as defined under the Fair Credit Reporting Act and

that Appellant/Petitioner's allegations under the Fair Credit Reporting Act, therefore, must be dismissed.

As set forth in the statutory language referred to above, in order to be a "consumer reporting agency" within the meaning of the Fair Credit Reporting Act, an entity must assemble or evaluate information "for the purpose of furnishing consumer reports to third parties." 15 U.S.C. Sec. 1681a(f). Thus, status as a "consumer reporting agency" is dependent on the definition of the term "consumer report". The term "consumer report" means "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of

living . . ." 15 U.S.C. Sec. 168la(d). (emphasis supplied.)

In this case, the rating challenged by the Appellant/Petitioner does not bear on Appellant/Petitioner's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living. While some or even all of those categories might be relevant to the "v" rating, which encompasses faithful adherence to ethical standards and "other relevant factors," Appellant/Petitioner's Complaint cannot be construed to challenge that rating since it is undisputed that at all times he has been given a "v" rating and, therefore, has suffered no damage in regard to that rating, but rather has benefited from it. The gravamen of Appellant/Petitioner's Complaint is that he has been given a "b"

as opposed to an "a" rating for legal ability.

It must be recognized that the legal ability rating challenged by Appellant/Petitioner deals with Appellant/Petitioner's professional reputation as a lawyer as evaluated by his peers, not with his general personal reputation or any personal characteristic. A rating of legal ability, therefore, is clearly not defined as a consumer report within the meaning of the Act and the Appellee/Respondent's publishing of such a rating does not make it a "consumer reporting agency." The Fair Credit Reporting Act was based on a finding by Congress that "[i]naccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public

confidence which is essential to the continued functioning of the banking system." 15 U.S.C. Sec. 1681(a)(1). The lawyer rating system of the Appellee/Respondent has nothing to do with the banking system or consumer credit. The purpose of the Fair Credit Reporting Act was to protect consumers from inaccurate or arbitrary information in a consumer report in determining an individual's eligibility for credit, insurance or employment. 16 Cong. Record 36, 572 (1970). It does not apply to reports used for business, commercial or professional purposes. See Matthews v. Northern Bank & Trust Co., 741 F.2d 217, 219-220 (8th Cir. 1984); Boothe v. TRW Credit Data, 523 F. Supp. 631, 633 (S.D. N.Y. 1981); Todd v. Associated Credit Bureau Services, Inc., 451 F. Supp. 447 (E.D. Pa. 1977); Wrigley v. Dun &

Bradstreet, Inc., 375 F. Supp. 969 (N.D. Ga. 1974); Sizemore v. Bambi Leasing Corp., 360 F. Supp. 252 (N.D. Ga. 1973); Porter v. Talbot Perkins Childrens Service, 355 F. Supp. 174 (S.D. N.Y. 1973). Thus, the Act does not extend to Appellee/Respondent's ratings of professional ability and Appellant/Petitioner's allegations under the Fair Credit Reporting Act were properly dismissed by the trial court.

In attempting to argue that the Appellee/Respondent is a "consumer reporting agency" within the meaning of the Fair Credit Reporting Act, the Appellant/Petitioner relies heavily on the case of Hoke v. Retail Credit Corp., 521 F. 2d 1079 (4th Cir. 1975).

When carefully examined, the case of Hoke v. Retail Credit Corporation, 521 F.2d 1079 (4th Cir. 1975), a case that

has never been cited in any reported decision, must be viewed as standing alone both in its reasoning and in its factual setting. In Hoke, the plaintiff doctor sought damages under the Fair Credit Reporting Act for injuries allegedly sustained as the result of inaccurate information contained in a report issued by Retail Credit Corporation to the Texas Board of Medical Examiners. The Board had requested the report in regard to Dr. Hoke's application for a license to practice medicine in Texas. The court in Hoke found that:

> since the sine qua non to the practice of medicine in Texas, and elsewhere, is a license to practice medicine, and since the information furnished by Retail Credit related to the question of whether the

> license would be granted, [it must be concluded that] . . . . the information was furnished for "employment purposes" in the broad generic sense of the word.

Thus, the Fourth Circuit's analysis in Hoke, centered on the definition of "employment purposes" as defined under Sec. 168la(d) of the Fair Credit Reporting Act. In determining that the report done on Dr. Hoke was a "consumer report" the Court in Hoke did not deal with the threshold issue of whether the information provided by Retail Credit Corporation related to Dr. Hoke's "credit worthiness, credit standing, credit capacity, character, and general reputation, personal characteristics, or mode of living," as defined in 15 U.S.C. Sec. 168la(d). As reflected in the actual reports involved in the Hoke

litigation that were attached as Appendix "1"[1] to the Appellee/Respondent's supplemental brief in the Georgia Court of Appeals, the information contained in the report supplied by Retail Credit Corporation clearly dealt with Dr. Hoke's credit history and personal characteristics. As noted above, however, the legal ability rating given by the Appellee/Respondent deals with Appellant/Petitioner's professional reputation as a lawyer as evaluated by his peers, not with his general personal reputation or any personal characteristics. Thus, regardless of whether the information collected by the

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[1]The record of the Hoke case is presently being stored at the Federal Records Center in Atlanta, Georgia and is available for inspection there during regular business hours. Counsel for the Appellee/Respondent reviewed the record and secured certified copies of relevant excerpts which were submitted to the Georgia Court of Appeals.

Appellee/Respondent in this case was used in whole or in part for "employment purposes," that information is not a "consumer report" within the meaning of 15 U.S.C. Sec. 168la(d) since it does not satisfy the first portion of the definition of "consumer report" set forth in 15 U.S.C. Sec. 168la(d).

It further should be noted that as reflected in the Plaintiff's Complaint as amended in the Hoke litigation, the thrust of the plaintiff's allegations in that case was the reports compiled by Retail Credit Corporation contained false information. (A copy of the plaintiff's complaint as amended was attached as a portion of Appendix "2" to the Appellee/Respondent's supplemental brief in the Georgia Court of Appeals.) The present case involves opinions relating to the Appellant/Petitioner's legal

ability and not to matters of independently verifiable fact. The accuracy of opinions could never be tested. The copy of the Record On Appeal in the Hoke case, attached to the Appellee/Respondent's supplemental brief in the Georgia Court of Appeals as Appendix "2", clearly shows that the issues presented to this Court completely differ from the issues addressed by the Fourth Circuit Court of Appeals in Hoke. Specifically, the Plaintiff in Hoke alleged in paragraph VI of his original Complaint that:

> this Consumer Investigative Report contained groundless and inflammatory comments and calumny of such outrageous and preposterous proportions that the defendants would immediately be alerted to their falseness and would grasp and

understand the great potential harm and danger that such reports could do to the character and reputation, professional standing and fitness for licensing in the medical profession of the plaintiff.

The reports that were attached as Appendix "1" to Appellee/Respondent's supplemental brief in the Georgia Court of Appeals, particularly the report dated 8-4-71, link Dr. Hoke to drug trafficking, abortions and the mysterious deaths of Dr. Hoke's wife and business partner. These peculiar facts may very well explain the Fourth Circuit Court of Appeals' efforts to find some way to give Dr. Hoke his day in court. This Court, however, is not bound to follow a case that is analytically unsound and apparently tainted by its peculiar facts. The reasoning of the Eighth Circuit in

Matthews v. Northern Bank & Trust Company, 741 F.2d 217, 219-220 (8th Cir. 1984), the United States District Court for the Northern District of Georgia in Sizemore v. Bambi Leasing Corporation, 360 F.Supp. 252 (N.D. Ga. 1973), and the United States District Court for the Southern District of New York in Boothe v. TRW Credit Data, 523 F.Supp. 631 (S.D. N.Y. 1981), firmly grounded in legislative history of the Fair Credit Reporting Act and its purpose, are far more persuasive.

It is likewise apparent that any claim that the Appellant/Petitioner has concerning libel does not raise a substantial federal question reviewable by this Court by writ of certiorari. The decision of the Georgia Court of Appeals on this issue did not turn on any claimed right, privilege or immunity

under the Constitution. The Georgia Court of Appeals merely found that the statements made by the Appellee/Respondent were not libelous as a matter of Georgia law.

Assuming arguendo that a statement that a lawyer is possessed of good legal ability and character could somehow be construed as libelous, Appellee/Respondent would note, however, that under the First Amendment, an opinion cannot constitute libel. As noted by one commentator, in Gertz v. Robert Welch, Inc., 418 U.S. 323, 339 (94 SC 2997, 41 LE2d 789) (1974):

> the Court asserted that as a matter of constitutional law there can be no such thing as a false idea or opinion. This principal, together with the implication in Gertz that only a falsehood can be defamatory,

> powerful syllogism: a defamation is actionable only if it is false; opinions cannot be false; therefore, opinions can never be actionable even if defamatory.

R. Sack, Libel, Slander, and Related Problems, 154 (1980). This syllogism is consistent with this Court's decision in Dunn & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. _____, 86 L.Ed. 2d 593 (1985).

Since Martindale-Hubbell, Inc. merely reported a consensus of opinion concerning Mr. Bergen's legal ability, there was no libelous publication as a matter of law. Any comment upon the legal ability of the Appellant/Petitioner which was reflected by the rating given by the Appellee/Respondent in its publication or by the individual evaluation sheets submitted to the

evaluation sheets submitted to the Appellee/Respondent by members of the Bar must be viewed as conveying "concepts whose content is so debatable, loose and varying," that they are clearly "within the realm of protected idea and opinion under Gertz." Buckley v. Littell, 539 F. 2d 882, 894, (2nd Cir. 1976), cert. denied, 429 U.S. 1062 (1977); Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485 (1984).[1]

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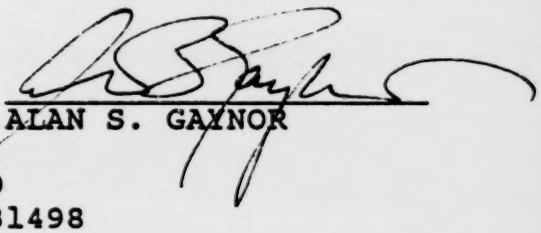
[1]Assuming arguendo, that Appellant/Petitioner could somehow set forth a claim for libel under the facts of this case, it must be emphasized that in addition to seeking damages for libel, Appellant/Petitioner also seeks to recover under the Fair Credit Reporting Act. Appellant/Petitioner may not assert both causes of action since his complaint does not allege that Martindale-Hubbell, Inc. has transmitted any information to third parties with malice or willful intent to injure the Appellant/Petitioner. 15 U.S.C. Sec. 1681h(e). It should also be noted that Appellant/Petitioner voluntarily subscribed to the Appellee/Respondent's publication and, therefore, consented to any statements contained in that publication.

V. CONCLUSION

Again, it must be clearly understood that this case has never been certified as a class action but is an action brought by one attorney who apparently seeks to substitute his own opinion of his legal ability for the opinions held by his peers. As shown above, there are no substantial issues for this Court's review.

Accordingly, Appellee/Respondent respectfully requests that the Appellant/Petitioner's appeal be dismissed for lack of jurisdiction or, to the extent that his jurisdictional statement can be construed as a petition for writ of certiorari, that said petition be denied.

Respectfully
Submitted,



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APPENDIX A

Oct 23 1985

IN THE COURT OF APPEALS OF GEORGIA

70441. BERGEN V. MARTINDALE-HUBBELL, INC.

BENHAM, Judge.

This is the third appearance of this case in the appellate courts. see 245 Ga. 742 (267 SE2d 10) (1980); 248 Ga. 599 (285 SE2d 6) (1981). The only claims remaining at thEtime of the judgment complained of in this appeal were based on libel and the Fair Credit Reporting Act (FCRA) (15 USCA Sec. 1681). The claim of violation of the FCRA is based on appellee's refusal to disclose to appellant the records on which it bases the ratings of legal ability which appear in the legal directory appellee publishes. The basis of the libel action is that appellant was assigned a rating

of "bv" rather than "av," the highest rating available. On this appeal, appellant enumerates as error the grant of judgment on the pleadings to appellee, the denial of partial judgment on the pleadings for apellant, and the trial court's failure to compel discovery before entering judgment.

1. "To justify the grant of a judgment on the pleadings it is not sufficient that the complaint fails to state a claim on which relief can be granted, but the pleadings must affirmatively show that no claim in fact exists. [Cit.]" Holzman v. Nat. Bank of Ga., 144 Ga. App. 710 (1) (242 SE2d 299) (1978).

2. In order for appellant to prevail on his claim under the FCRA, appellee must be a "consumer reporting agency" since the disclosure requirements

alleged to have been violated apply only to "consumer reporting agencies." 15 USCA Sec. 1681g. "The term 'consumer reporting agency' means any person which, for monetary fees, dues, or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. . ." 15 USCA 1681a (f). "The term 'consumer report' means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. . ." 15 USCA Sec. 1681a (d).

As may be seen from the definitions quoted above, appellee may be considered a consumer reporting agency and thus subject to the disclosure requirements of the FCRA, only if it furnishes consumer reports, that is, only if it furnishes information "bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living." The pleadings in the record before us do not allege that appellee furnishes such information. Appellant's complaint alleges, and appellee admits, that the rating of which appellant complains deals with <u>legal ability</u>. The rating does not purport to concern any aspect of appellant's credit, general reputation, personal characteristics or mode of living. As appellant himself alleges in his

pleadings, the rating is based on a "consensus of opinion as to legal ability." We hold, therefore, that under the allegations of the pleadings, appellee's publication does not constitute a "consumer report" within the meaning of the FCRA; that appellee is not, therefore, a "consumer reporting agency" and is not subject to the disclosure provisions of the FCRA. That being so, the pleadings show that no claim against appellee exists under the FCRA. The grant to appellee of judgment on the pleadings on appellant's claim under the FCRA and the concomitant denial of the appellant's motion for partial judgment on the pleadings on that issue were correct. Holzman, supra.

3. Appellant's libel action is based on the publication of what he alleges in his complaint to be an opinion

of his legal ability in comparison to that of other attorneys. The expression of opinion on "matters with respect to which reasonable men might entertain differing opinions" (Grayson v. Savannah News-Press, 110 Ga. App. 561, 568 (139 SE2d 347) (1964)) is not libelous. The relative abilities of different lawyers is patently such a matter, wholly subjective and not capable of proof or disproof. Appellee here is entitled, as was the appellee in Grayson, to express such opinions. "An assertion that cannot be proven false cannot be libelous. A writer cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be. [Cits.]" Hotchner v. Castillo-Puche, 551 F2d 910, 913 (1977). "However pernicious an opinion may seem, we depend for its

correction not on the conscience of judges and juries but on the competition of other ideas." Gertz v. Robert Welch, Inc., 418 U. S. 323, 339 (94 SC 2997, 41 LE2d 789) (1974).

Since what appellant contends was libel was a statement of opinion which, as the cases cited above hold, cannot be libel, appellant's pleadings show that no claim for libel exists in this case. Accordingly, the trial court did not err in granting appellee's motion for judgment on the pleadings on appellant's libel claim. Holzman, supra.

4. Appellant's third enumeration of error is that the trial court erred in "failing to rule on and failing to deny defendant's objections to plaintiff's interrogatories. . ." Our review of the record shows that appellant served interrogatories on appellee, and appellee

answered some of them and objected to the rest. So far as the record shows, that was the end of the matter, there being nothing in the record to show that appellant availed himself of the opportunity provided in OCGA Sec. 9-11-33 (a) (2) to move for an order under OCGA Sec. 9-11-37 (a) with respect to the objections. There having been no invocation by appellant of the trial court's authority in this matter, we find no error in the trial court's nonaction with respect thereto. Cf. Clements v. Toombs County Hosp. Auth., 175 Ga. App. 651 (1) (SE2d) (1985).

Judgment affirmed. Banke, C. J., and McMurray, P. J., concur.

APPENDIX B

RELEVANT SECTIONS OF THE FAIR CREDIT REPORTING ACT FURNISHED IN THIS CASE

As reflected in 15 U.S.C. Sec. 1681(6) the purpose of the Fair Credit Reporting Act was to:

> require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

In enacting the Act, Congress made the following findings:

(1) The banking system is dependent

upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise

their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

15 U.S.C. Sec. 1681(a).

In 15 U.S.C. Sec. 1681a(f), the term "consumer reporting agency" is defined as:

> any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engaged in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The term "consumer report" is defined in 15 U.S.C. Sec. 1681a(d) as follows:

> The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section

1681(b) of this title. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required

under section 1681(m) of this title. (Emphasis supplied.)

An "investigative consumer report", a species of consumer report, is defined by 15 U.S.C. Sec. 1681a(e) as:

> a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer

reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

APPENDIX C

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

JOSEPH B. BERGEN, J.D., Attorney at Law, Individually and on Behalf of All Other Attorneys in the State of Georgia Similarly Situated,	)	CASE NO. A-796 COURT OF APPEALS CASE NO. 70441
Appellant,	)	
vs.	)	
MARTINDALE-HUBBELL, INC.,	)	
Appellee.	)	

AFFIDAVIT

I, ALAN S. GAYNOR, hereby certify that on July 25th, 1986, Tower Printing Company, to the best of my knowledge, mailed 40 copies of the above entitled case, by first class mail, postage

prepaid, to the Clerk of this Court for filing.

Member of the United States Supreme Court Bar

Sworn and subscribed before me this 23 day of July, 1986.

NOTARY PUBLIC

ELAINE S. NELSON
Notary Public, Georgia, State at Large
My Commission Expires July 17, 1987

APPENDIX D

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1985

JOSEPH B. BERGEN, J.D., Attorney at Law, Individually and on Behalf of All Other Attorneys in the State of Georgia Similarly Situated,	)	CASE NO. A-796
Appellant,	)	COURT OF APPEALS CASE NO. 70441
vs.	)	
MARTINDALE-HUBBELL, INC.,	)	
Appellee.	)	

PROOF OF FILING AND SERVICE

I, the undersigned ALAN S. GAYNOR, attorney of record for the Appellee and a member of the Bar of the Supreme Court of the United States, deposes and says that on the 25th day of July, 1986, I filed 40 copies of the foregoing MOTION TO DISMISS to the Supreme Court of the

United States with the Clerk of the Supreme Court of the United States and I served three copies of this MOTION TO DISMISS to the Supreme Court of the United States on Joseph B. Bergen, Esq., Attorney for Appellant, whose address is: Columbia Square Law Offices, 125-127 Habersham Street, Savannah, Georgia 31401, who are all the parties required to be served, by causing to be placed these copies of said MOTION TO DISMISS in an authorized depository for mail at a United States Post Office in a properly addressed envelope with sufficient prepaid postage thereon to insure First Class Certified Mail delivery within the time allowed for such filing.

THIS 23 day of July, 1986

ALAN S. GAYNOR
Attorney for
Appellant

Sworn and subscribed
before me this 23
day of July, 1986.

NOTARY PUBLIC

ELAINE S. NELSON
Notary Public, Georgia, State at Large
My Commission Expires July 17, 1987